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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

B5

DATE: **JUN 20 2011**

OFFICE: NEBRASKA SERVICE CENTER

FILE: [REDACTED]

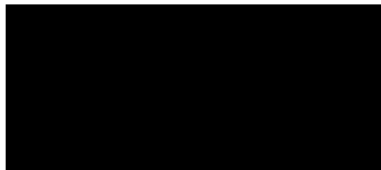
IN RE:

Petitioner:
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a transportation engineer for the California Department of Transportation (Caltrans), San Diego. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits witness letters and technical materials.

Section 203(b) of the Act states, in pertinent part:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer --

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the “prospective national benefit” [required of aliens seeking to qualify as “exceptional.”] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Commr. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien’s past record justifies projections of future benefit to the national interest. The petitioner’s subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term “prospective” is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the regulation at 8 C.F.R. § 204.5(k)(2) defines “exceptional ability” as “a degree of expertise significantly above that ordinarily encountered” in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on February 23, 2009. In an introductory statement, counsel stated that the petitioner “has received high praise for his innovative research, including election to the Mexican National System of Researchers, one of that country’s highest honors. . . . We believe that [the evidence] speaks for itself and that [the petitioner’s] skills, reputation and the related benefit to the United States are evident.”

The petitioner’s *curriculum vitae* includes a description of his work at Caltrans:

I am currently involved in activities of program and project management. In addition, I will be part of the team that will develop the risk management plan of Caltrans District 11. Provided support to several project managers in developing working plans, resource assignment and planning, project monitoring and control, project estatus [*sic*] and project planning analysis together with risk analysis. Performed weaving analysis for an entire Corridor and worked as assistant construction engineer performing duties as inspector in construction sites.

The petitioner submitted translated copies of his professional credentials and work product such as articles and reports, and information regarding his book, [REDACTED]. These materials demonstrate the petitioner's activity in his field, but they do not "speak for themselves" in terms of how the petitioner's work compares to that of other qualified engineers.

The petitioner submitted what counsel described as "[a]n explanation and analysis of [the petitioner's] use of artificial neural networks in risk management." This "explanation and analysis" is a translated fragment of a Spanish-language document, which appears to be a research proposal. One of the researchers named for the project is [REDACTED], one of the petitioner's mentors. The document described research efforts in several countries, including the observation that one of the petitioner's works "demonstrates the use of an advance of an integral methodology for quantifying the cost of risks for infrastructure projects in Germany, while using artificial neural networks." The proposal indicated the researchers' intention to adapt the petitioner's processes, developed in Germany, to the conditions prevailing in Mexico.

The petitioner also showed that he has served on juries considering the theses of engineering students at the Universidad de las Americas Puebla, while he was a lecturer at that university. Such work does not appear to be part of his current duties. The petitioner has not shown that it was out of the ordinary for a university lecturer to evaluate the work of students at that university.

The petitioner submitted computer-translated background information about [REDACTED] (from its Spanish initials), which "was created by Presidential Agreement . . . to recognize the work of people engaged in producing scientific knowledge and technology. The recognition is awarded through the appraisal [of] peers and to confer the appointment of researchers. This distinction symbolizes the quality and prestige of the scientific contributions." [REDACTED] granted the petitioner "the title of National Researcher Candidate for the period dating from January 1st, 2006 until December 31st, 2008, in recognition [of] his capacity to work doing Scientific Research." Documentation shows that [REDACTED] provided "economic support" to the petitioner. Materials in the record are somewhat ambiguous, but appear to indicate that the beneficiary received this support not through independent nomination, but by applying for it. The record contains a copy of what appears to be a contract between the petitioner and SNI, but the petitioner did not submit a certified translation as required by the regulation at 8 C.F.R. § 103.2(b)(3). The materials submitted do not support counsel's claim that SNI membership "is one of the highest scientific honors that can be obtained in Mexico."

The petitioner submitted what counsel described as “[l]etters attesting to [the petitioner’s] outstanding international reputation. One expresses a desire to continue to do research with [the petitioner]; the other includes information on his unique background.” This wording implies that there are two letters, but there are four letters, from two witnesses.

Three of the letters are from [REDACTED] head of the Technische Universität Dresden, Germany, and all date from several years before the petition’s filing date. In a letter dated September 3, 2004, [REDACTED] stated that the petitioner “did research at my Institute . . . from June 2000 to November 2002. [During] this period, he worked as a doctorate student and supported me as a research assistant.” In the remaining two (similarly worded but distinct) letters, both dated May 2, 2005, Prof. Schach stated: “Considering the experiences with [the petitioner] while he was doing his Doctorate work at my Institute, I am very interested in continuing joint research work and as well to develop further research projects in order to establish former results in practical applications.” These letters from a former professor do not “attest[] to [the petitioner’s] outstanding international reputation,” either directly through their text or indirectly by implication.

The petitioner submitted two copies of a November 1, 2008 letter from [REDACTED] planning director for [REDACTED] who stated:

[The petitioner] worked as a civil engineer within our company for several important and challenging construction projects. . . .

I was amazed about the abilities of [the petitioner] for coordinating different construction teams and manag[ing] different staff levels at the office. He was all the time a very concrete person, highly motivated for decision-making. . . .

[A]s an alumn[us] of the Instituto Tecnologico de Tijuana . . . , he was distinguished for achieving two local first places in a National Scientific contest and he was recognized for his outstanding participation in two regional scientific contests.

The petitioner has studied and worked in several different countries. This makes him well-traveled, but he does not enjoy an “international reputation” simply because he has mentors and former employers in more than one country.

Five employees and officials of Caltrans District 11 provided letters as well. Project manager and design manager [REDACTED] the petitioner’s supervisor, stated:

[The petitioner’s] assistance has been instrumental to completing our freeway projects located in San Diego County, and critical to our efforts of improving the mobility in California.

Our working engagement began in October 2006 and continued through November 2007 during which time I personally supervised his engineering work on Interstate 5.

His assignments have included work on the Interstate 5 (I-5) North Coast Corridor Project that proposes widening a 27-mile long segment of the existing I-5 freeway in San Diego County. This Project has been designated as a high priority project under the United States President's Executive Order (E.O. 13274) for Environmental Stewardship and Transportation Infrastructure Projects. [The petitioner's] work focused on complex Traffic Studies that have been paramount to the completion of the project Environmental Impact Statement. . . .

[The petitioner] has shown his engineering abilities and determination to support the transportation needs in California.

Another project manager, [REDACTED] described the petitioner's work on the I-5 project in almost exactly the same words as [REDACTED] used, and added:

[The petitioner's] strong background in project and risk management, in addition [to] his international education and work experience; combine[d] together with the know-how gained in Caltrans while rotating through the Divisions of Program Project Management, Design and Construction, made him a[n] extremely valuable talent for improving Caltrans current practices in project management and project delivery. I am completely confident that [the petitioner] possesses the integrity and unique knowledge and skills that are critical for improving the management and the execution of transportation projects in the United States.

[REDACTED] stated: "I concur with the maximal recommendations expressed by [REDACTED] and [REDACTED]. . . . The above Project Managers work directly under my direction."

[REDACTED] deputy district director of District 11's construction division, offered general praise for the petitioner's "excellent technical knowledge and management skills, but more importantly his ability to communicate with staff [at] various levels."

District Director [REDACTED] stated that the petitioner "has demonstrated incredible initiative and strong dedication. [The petitioner] has played a critical role in Caltrans as the expert on risk management. He has shown a high degree of integrity, commitment, teamwork, and innovation."

The letters quoted above indicate that the petitioner is a valued Caltrans employee, but do not show that a waiver of the job offer requirement would be in the national interest.

On June 26, 2009, the director instructed the petitioner to submit evidence regarding the petitioner's "accomplishments in the field" and "influence in the field of endeavor." The petitioner's response included letters from five more Caltrans officials (four of them in District 11). These individuals discussed the petitioner's appointment as Caltrans District 11's risk management coordinator.

The record shows that this appointment took place on March 2, 2009, after the petition's February 23, 2009 filing date. An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition. 8 C.F.R. § 103.2(b)(1). Therefore, subsequent events cannot cause a previously ineligible alien to become eligible after the filing date. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). The AAO will consider information about the petitioner's contributions in the area of risk management, but any argument about the importance of the beneficiary's new position as risk management coordinator cannot show that the beneficiary was already eligible for the waiver before he was in that position.

██████████, a senior transportation planner and project manager, stated:

[The petitioner] is a critical member of our Caltrans team and particularly projects that I am responsible for delivering from their inception to construction completion. [The petitioner] was appointed to this position because of his specific accomplishments [in] the fields of Civil Engineering, Construction Management and Risk Management. . . .

[The petitioner's] influence in the field of risk management was first demonstrated when he was very active[ly] participating with the Caltrans Risk Management expert group statewide, even though he was considerably new to our organization. His input was key for upgrading Caltrans methodology for performing quantitative risk analysis. Through this group's effort [the petitioner] was a contributor to the statewide Caltrans Project Risk Management Handbook and the enhancement of the risk analysis process and its tools (software) for implementation.

██████████ a project management professional, emphasized the growing importance of risk management in the engineering field, and stated:

[The petitioner] is extremely qualified to provide the Department of Transportation with risk analysis/management skills and expertise that are in short supply in the project management community at this time. To deny the Department his expertise would leave a big void and one that would remain unfilled for quite some time. The duties and responsibilities for performing [the petitioner's] position demand unique abilities and we have found that they are substantially in greater extent in his skill set than the majority of his peers. . . .

The results obtained so far . . . have influenced the project management field in Caltrans significantly. Upper level executive management and mid-level management are all supporters and advocates for implementing further the risk analysis (quantitative methodology) approach to all relevant projects in Caltrans and to create a permanent position for risk management based on this approach. [The petitioner] is a key component towards these efforts. In addition, [the petitioner's] peers have been influenced by the implementation of risk management and its results, and several peers had already consulted him for further advice in the field.

It is hard to imagine me finding someone internally (within the Department) who has or is his equal in technical expertise and knowledge. [The petitioner's] experience in the field of risk analysis research will keep the Department that we work for up to date and cutting edge.

██████████, deputy district director of program/project management, stated:

The influence of [the petitioner] in the field of risk management was first noticed when he [was] singled out as the technical expert in a statewide Caltrans Risk Management team even though he was relatively new to the organization. As part of this process, he reviewed the Caltrans Project Risk Management Handbook. His input was instrumental in upgrading Caltrans' methodology for performing quantitative analysis such as the development of risk stochastic models for cost and time.

██████████ deputy district director of administration, stated: "Part of my assignment is to make sure the Department hires the most qualified engineers to help in building the State of Federal [sic] infrastructure. [The petitioner] is part of that selection process and has demonstrated his abilities throughout his career with us." ██████████, like some other witnesses, asserts that no one else at Caltrans has the petitioner's skill set in risk management. The standard for the waiver, however, is not whether or not the employer already has someone on staff who could adequately replace the petitioner. Rather, the waiver concerns the job offer process, including alien employment certification.

The only witness outside of Caltrans District 11 is ██████████ branch chief of central region program/project management in Fresno. He stated:

[The petitioner] and I met approximately 4 years ago as we were brought together, by nomination by several of our statewide districts, to serve on a task force to revamp our departmental Project Risk Management Handbook. We were part of a 7-member team and he represented the voice of the San Diego district of our Department. Through the numerous meetings that we held, it was evident that he was one of the most knowledgeable individuals on the subject of Risk Management. . . .

By the end of several months of collaboration the team had successfully produced a handbook that we can proudly call one of our best ever project management handbooks. This was the second edition of our Risk Management handbook, and it superseded the former version by leaps-and-bounds.

Without a shadow of doubt it can be said, that the principles, procedures and best practices noted in the guide have saved the State millions of dollars. And without a

shadow of doubt I can confidently say that it was [the petitioner's] presence and active participation that made this product . . . worth it[s] weight in gold.

Witnesses have attested to the scarcity of workers with the petitioner's qualifications, which would appear to operate in the petitioner's favor in the alien employment certification process (which exists for the purpose of determining the availability of qualified workers).

The witnesses are unanimous in stating that the petitioner is well qualified for what appears to be the newly-created position of risk management coordinator. The witnesses, however, did not explain how a waiver of the job offer requirement would be in the national interest (as opposed to the narrower interest of Caltrans). The petitioner has not shown the impact that his work has had outside of Caltrans.

The petitioner submitted documentation relating to several individual projects, but the petitioner has not explained how these technical materials demonstrate that the petitioner's past work has resulted in substantially greater cost savings than Caltrans would have seen from a different qualified worker in the same position.

The director denied the petition on January 25, 2010, stating that the petitioner had not established that his work has had a significant impact outside of Caltrans, and that assertions of major cost savings were "not supported by verifiable evidence." On appeal, the petitioner submits copies of reports and other technical materials, many of which date from after the filing of the petition. The petitioner does not specifically explain the significance of these materials.

The petitioner also submits several new witness letters. [REDACTED] coordinator at the Instituto Tecnológico de Sonora, Mexico, states:

[The petitioner's] knowledge in risk management has been of great influence in our academic programs. Including both; teaching at postgraduate levels and research in civil engineering with emphasis in construction and risk management. . . .

[The petitioner's] volunteer role with postgraduate lectures has been very successful. He started . . . two years ago supporting our Masters in Science in Construction Management with on-line and live classes, teaching topics [such] as planning and controlling construction projects, organization behavior in construction and risk management for construction projects. His contribution has been fundamental to gain more respect within the civil engineering society in Sonora and in addition, he has been the main reason of many students willing to enroll [in] our master program.

The above letter emphasizes the local impact and benefit that the petitioner's work has had (by his direct involvement, the petitioner has enhanced the prestige of one university's construction management program).

██████████ a doctoral student in Munich, Germany, who met the petitioner when they were both studying in Dresden, states that the petitioner's "Neuronal Risk Assessment System" "has several researchers awoken [*sic*] here in Germany, and it can be found in several Master Thesis and Doctoral Works." The petitioner submits no objective evidence to show the extent to which his system is in practical use, and no citation data to show the extent to which fully qualified, working engineers (as opposed to graduate students) rely on his published work.

In a letter dated March 8, 2010, ██████████ of the Universität der Bundeswehr München states:

I have been in contact with [the petitioner] for more than two years, through the personal contact of one of my researchers. . . .

The importance and development of his new Risk Analysis Method represents a milestone for further improvement and research in the field of risk management, with special interest in the analysis and quantification of risks in economic terms, which is a very difficult topic for quantifying the risks and chances.

The [petitioner's] methods represent the state of the art of risk analysis techniques; the utilization of Artificial Neural Networks (ANN) is a new point of view and methodology to forecast risk [that] has revolutionized the way of analyzing risks. Nowadays, ANN's represents [*sic*] a new standard for performing risk management.

Risk management is nowadays one of the most important tasks in the development of a construction project and the pedestal of project management. [The petitioner's] vision for proposing a new system and technique for dealing with uncertainties in construction projects has become one of the most promising techniques to deal with risks not only in Germany but over the world; as a consequence several researchers recognize the potential of the technique.

With my practical and academic experience, I have to recognize that [the petitioner's] contribution in the field of risk management in construction projects has been outstanding. His book, Neuronal Risk Assessment System for Construction Projects, has become an obligated [*sic*] literature to any risk manager, to define the current state of [the] arts.

A new letter from ██████████ dated March 23, 2010, contains language that is very similar, at times identical, to much of ██████████ letter, including the same grammatical anomalies (such as "ANN's represents"). Both of these letters contain the claim that the petitioner's book is widely used and influential, but the record contains no independent evidence to support that claim. For instance, the petitioner has not documented significant independent citation of the book, or established its use at institutions where the petitioner has neither worked nor studied. Instead, the petitioner has only submitted praise from close collaborators.

██████████ Caltrans's risk management coordinator for the San Francisco-Oakland Bay Bridge (SFOBB), states:

I have the pleasure of working together with [the petitioner] in the area of risk management and its application on Caltrans statewide efforts as well as the SFOBB project. [The petitioner's] publication entitled "Neuronal Risk Assessment System for Construction Projects" has been an influence on the field of risk management by providing enhanced techniques to quantify the cost of risks involved in construction projects, such as the SFOBB project.

. . . [The petitioner's] permanence is crucial for helping Caltrans in achieving its goals of project delivery and for improving Caltrans' current practices for project risk cost/schedule analysis.

In his second letter in support of the petition, ██████████ states:

Quantitative risk analysis/management skills and expertise are in short supply amongst the nation's project management community at this time. To deny the Department [the petitioner's] expertise would leave a big void and one that would remain unfilled for quite some time. The duties and responsibilities for performing [the petitioner's] position demand unique abilities and we have found that they are substantially in greater extent in his skill set than the majority of his peers. . . .

The advanced (PhD level) technical expertise and knowledge of [the petitioner] cannot be covered by another competent, available and qualified U.S. worker in Caltrans and most certainly not on the staff at San Diego, California.

The above arguments echo ██████████ previous letter, asserting that no current Caltrans employee is available with the petitioner's skill set. The alien employment certification process, however, does not compare an alien to the alien's current co-workers. Rather, the process determines whether qualified United States workers are available to fill a given position. A lack of qualified workers, such as ██████████ emphatically claims, favors approval of the certification. The petitioner cannot sidestep the process simply by declaring the unavailability of qualified workers. *See Matter of New York State Dept. of Transportation*, 22 I&N Dec. 222.

As an example of the petitioner's work, ██████████ discussed the "rehabilitation and retrofit of the Laurel ST OC Bridge over State Route 163," a historic landmark built in 1915:

[The petitioner's] involvement led to an immediate project cost savings of \$265,000. If you extrapolate the cost savings realized through [the petitioner's] efforts on this project over the total number of District projects that have a budget of over \$25,000,000 in just this fiscal year (11 of 26 total projects,) it is easy to see the potential for savings of approximately \$3,000.000. . . .

The results obtained so far due to [the petitioner's] efforts (risk registers, risk cost analysis reports, the Risk Management Information System) have been invaluable for the preservation of the structure but also in terms of their importance for helping the Department to save hundreds of thousands of dollars and potentially millions of dollars through the use of newly integrated qualitative methods of risk assessment. The Cost Risk Analysis Report for the one project described above generated by [the petitioner] show[s] that in terms of quantified risks the project would save about \$9,000,000 by choosing one alternative over another.

The petitioner identified no evidence in the record to support [redacted] claims, or his assumptions (such as the apparent assumption that the risk management savings would amount to the same proportion of every project's budget).

[redacted] signing a letter on behalf of Caltrans district director [redacted] repeats the claim that "finding these kinds of experts . . . is very difficult," and states that Caltrans saves "approximately \$474,660" each year by employing the petitioner directly rather than hiring an outside consultant. This argument rests on the presumption that the denial of the waiver would inevitably force the petitioner's dismissal from Caltrans, but the petitioner has not explained why this would be the case.

[redacted] director of project risk management at [redacted] California, has "worked professionally with [the petitioner] for over three years," having met the petitioner "through my client at the California Department of Transportation (Caltrans)." [redacted] states that he and the petitioner have collaborated for "[a]bout a year. . . . We have succeeded in rolling out project risk management in the District and in obtaining the buy-in and support of project managers." [redacted] offered few details about the petitioner's work apart from praising "his innovative work in applying artificial intelligence concepts to construction management."

The opinions of experts in the field are not without weight and the AAO has considered them above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as the AAO has done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

The letters considered above primarily contain bare assertions of widespread recognition and influence, without specific examples of how the petitioner's contributions have influenced the field

beyond the specific institutions where he has worked and studied. The petitioner did not submit letters from independent references who affirm their own reliance on the beneficiary's work or who were even simply familiar with his work through his reputation. The petitioner also failed to submit specific corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

The record establishes that Caltrans considers the petitioner to be highly qualified for the position of risk management coordinator. The petitioner has not, however, submitted persuasive, objective evidence to show that a waiver of the job offer requirement is in the national interest (as opposed to the narrower interest of Caltrans). The petitioner has not demonstrated that his future work will be of direct, substantial benefit outside of Caltrans. Witness claims about the difficulty of locating qualified workers argue in favor of obtaining, rather than waiving, alien employment certification.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.